

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHNNY VILLAR,

Petitioner,

ORDER
03 CV 5390 (GBD)(THK)

-against-

DAVID MILLER,

Respondent.

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GEORGE B. DANIELS, District Judge:

Pro se Petitioner seeks habeas relief under 28 U.S.C. § 2254, asserting that he received ineffective assistance of trial counsel because (1) counsel failed to review an incriminating audio tape that was introduced into evidence; (2) counsel insisted that Petitioner testify and then asked questions of Petitioner that caused him to incriminate himself; (3) failed to impeach prosecution witnesses; and (4) failed to call alibi witnesses.

Magistrate Judge Theodore H. Katz issued a Report and Recommendation (“Report”) wherein he recommended that all of Petitioner’s claims be dismissed. In his Report, Magistrate Judge Katz advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections and would preclude appellate review. Neither party filed objections to the Report, and the time to do so has expired. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

The Court may accept, reject, or modify in whole or part the findings and recommendations set forth within the Report. Fed.R.Civ.P. 72(b); 28 U.S.C. § 636(b)(1)(C). Where there are no objections, the Court may accept the Report provided there is no clear error on the face of the record. See Nelson v. Smith, 618 F.Supp 1186, 1189 (S.D.N.Y. 1985); see also Heisler v. Kralik, 981 F.Supp. 830, 840 (S.D.N.Y. 1997), aff’d 164 F.3d 618 (2d Cir. 1998).

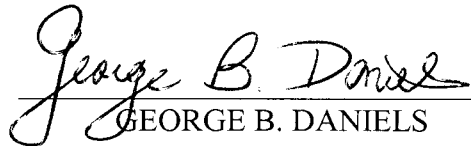
After reviewing the Report, the Court finds that the record is not facially erroneous with respect

to the findings and recommendation regarding Petitioner's claims. Accordingly, the Court hereby adopts the Report and Recommendation. For the reasons stated therein, the writ is denied and the petition is dismissed.

As the Petitioner has not made a substantial showing of the denial of a federal right, a certificate of appealability will not issue. 28 U.S.C. § 2253; Tankleff v. Senkowski, 135 F.3d 235, 241 (2d Cir. 1998); United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997); Lozada v. United States, 107 F.3d 1011 (2d Cir. 1997). Additionally, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. Coppedge v. United States, 369 U.S. 438 (1962).

Dated: August 29, 2005
New York, New York

SO ORDERED:


GEORGE B. DANIELS
United States District Judge